

Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 INRE-00 SS-15 NSC-10 CIAE-00 INR-10

NSAE-00 RSC-01 L-03 SEC-03 JUSE-00 TRSE-00 PRS-01

NSCE-00 SSO-00 RSR-01 /070 W
----- 001927

O 221820 Z MAY 73

FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 7749

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DEPT FOR EUR/ CE SUTTERLIN; L MCDOWELL; PASS JUSTICE PETERSEN;
PASS TREASURY MORGAN; PASS SEC POLLACK

E. O. 11652: N/ A

TAGS: EFIN, PFOR, US, SZ

SUBJ: JUDICIAL ASSISTANCE TREATY - ARTICLE 4

1. FOLLOWING IS AD REFERENDUM AGREEMENT ON NEW CHAPTER 4, AND
LETTERS OF EXCHANGE TO ACCOMPANY, TO BE INSERTED IN PLACE OF
CHAPTER 4 WHICH BECOMES CHAPTER 5 (THERE IS PRESENTLY NO CHAPTER
5):

QUOTE

CHAPTER IV OBLIGATIONS OF REQUESTING STATE ARTICLE 12 BIS
RESTRICTIONS ON USE OF TESTIMONY

ANY TESTIMONY OBTAINED PURSUANT TO THIS TREATY FROM A CITIZEN
OF THE REQUESTED STATE, INTERROGATED AS A WITNESS AND NOT ADVISED
OF HIS RIGHT TO REFUSE TESTIMONY UNDER PARAGRAPH 1 OF ARTICLE 10,
MAY NOT BE INTRODUCED AS EVIDENCE AGAINST SUCH WITNESS IN A
CRIMINAL PROCEEDING IN THE REQUESTING STATE UNLESS THE PROSEC-
UTION IS FOR AN OFFENSE AGAINST THE ADMINISTRATION OF JUSTICE.
END

QUOTE

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QUOTE

ARTICLE 12 TER EXCLUSION OF SANCTIONS

NO CITIZEN OF THE REQUESTED STATE WHO HAS REFUSED TO GIVE NON-COMPULSORY TESTIMONY OR INFORMATION AGAINST WHOM COMPULSORY MEASURES HAD TO BE APPLIED IN THE REQUESTED STATE PURSUANT TO THIS TREATY SHALL BE SUBJECTED TO ANY LEGAL SANCTION IN THE REQUESTING STATE SOLELY BECAUSE HE HAS EXERCISED SUCH RIGHTS AS PERMITTED UNDER THIS TREATY.

QUOTE

ARTICLE 12 QUATER PROTECTION OF SECRECY

EVIDENCE OR INFORMATION DISCLOSED BY THE REQUESTED STATE PURSUANT TO PARAGRAPH 2 OF ARTICLE 10 SHALL, IF IN THE OPINION OF THAT STATE ITS IMPORTANCE SO REQUIRES AND AN APPLICATION TO THAT EFFECT IS MADE, BE KEPT FROM PUBLIC DISCLOSURE TO THE FULLEST EXTENT COMPATIBLE WITH CONSTITUTIONAL REQUIREMENTS IN THE REQUESTING STATE.
END QUOTE

QUOTE

DRAFT EXCHANGE OF LETTERS ACCOMPANYING ARTICLE 12 QUATER

EXCELLENCY:

I HAVE THE HONOR TO REFER TO THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS SIGNED ON 1973, AND IN PARTICULAR TO ARTICLE 12 QUATER THEREOF.

WITH RESPECT TO THE OBLIGATION UNDER ARTICLE 12 QUATER TO LIMIT THE DISCLOSURE OF EVIDENCE OR INFORMATION FURNISHED BY SWITZERLAND, YOUR ATTENTION IS DIRECTED TO THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHICH PROVIDES THAT:

(BEGIN UNDERLINE) " IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED
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SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL (END UNDERLINE) , BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL

FOR HIS DEFENSE." (EMPHASIS SUPPLIED)

FROM INTERPRETATIONS OF THIS AMENDMENT BY FEDERAL COURTS IN THE UNITED STATES, IT WOULD APPEAR THAT ANY ATTEMPT TO RESTRICT PUBLIC ACCESS TO TESTIMONY RELATING TO THE GUILT OR INNOCENCE OF AN INDIVIDUAL BEING PROSECUTED WOULD BE VIOLATIVE OF THE PUBLIC TRIAL PROVISION. THIS WOULD APPLY TO TESTIMONY TAKEN IN SWITZERLAND PURSUANT TO THIS TREATY AND OFFERED IN EVIDENCE IN A CRIMINAL TRIAL IN THE UNITED STATES.

INTERPRETATIONS OF THIS AMENDMENT ALSO INDICATE THAT PUBLIC ACCESS CANNOT BE DENIED TO DOCUMENTS INTRODUCED IN EVIDENCE WHICH RELATE TO THE GUILT OR INNOCENCE OF THE DEFENDANT WITHOUT VIOLATING THE PUBLIC TRIAL PROVISION OF THE CONSTITUTION. HOWEVER, SINCE THE QUESTION OF DENYING PUBLIC ACCESS TO DOCUMENTS IS NOT ENTIRELY FREE FROM DOUBT, THE UNITED STATES GOVERNMENT WILL SEEK TO OBTAIN A PROTECTIVE ORDER, WHERE APPROPRIATE, IN AN EARLY CASE IN WHICH DOCUMENTARY EVIDENCE IS FURNISHED BY SWITZERLAND. SUCH PROTECTIVE ORDER WOULD SEEK TO CONFINE ACCESS TO THE DOCUMENTARY EVIDENCE ITSELF TO THE COURT, JURY, PROSECUTION, DEFENDANT, AND HIS COUNSEL AT THE TRIAL AND APPELLATE

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INFO OCT-01 ADP-00 SS-15 NSC-10 CIAE-00 INR-10 NSAE-00

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TO SECSTATE WASHDC IMMEDIATE 7750

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STAGES. TO THE EXTENT THAT THE USE OF A PROTECTIVE ORDER IS UPHELD BY OUR COURTS, THE UNITED STATES GOVERNMENT WILL APPLY FOR SUCH ORDERS IN HANDLING DOCUMENTARY EVIDENCE FURNISHED BY SWITZERLAND PURSUANT TO THE TREATY AS TO WHICH SWITZERLAND MAKES A REQUEST PURSUANT TO ARTICLE 12 QUATER.

MOREOVER, A DEFENDANT IN A CRIMINAL PROCEEDING, SHOULD BE

VOLUNTARILY CHOOSE TO DO SO, IS NOT PROHIBITED FROM SEEKING TO WAIVE HIS CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL WHICH, IF GRANTED, WOULD RESULT IN LIMITING PUBLIC ACCESS TO EVIDENCE AND INFORMATION OBTAINED FROM SWITZERLAND.

REGARDLESS OF THE EXTENT TO WHICH SECRECY IS PERMITTED DURING THE TRIAL OR APPEAL, THE UNITED STATES GOVERNMENT WILL, AFTER COMPLETION OF THE TRIAL OR APPEAL, SEEK TO HAVE THE COURT SEAL THOSE PARTS OF THE OFFICIAL FILE WHICH CONSIST OF MATERIALS OBTAINED BY THE UNITED STATES FROM SWITZERLAND UNDER THIS TREATY AND ARE THE SUBJECT OF AN APPLICATION BY SWITZERLAND PURSUANT TO ARTICLE 12 QUATER OF THIS TREATY.

I WOULD APPRECIATE A LETTER FROM YOUR EXCELLENCY ACKNOWLEDGING THIS COMMUNICATION.

ACCEPT EXCELLENCY....

END QUOTE

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QUOTE

DRAFT EXCHANGE OF LETTERS ACCOMPANYING 12 QUATER

EXCELLENCY:

I HAVE TAKEN DUE NOTE OF YOUR LETTER OF MAY 25, 1973, SETTING OUT WHAT ARTICLE 12 QUATER MEANS IN SOME MORE DETAIL. I SHOULD LIKE TO THANK YOU FOR YOUR EXPLANATION.

YOU HAVE ADVISED ME THAT FOR CONSTITUTIONAL REASONS EVIDENCE OR INFORMATION DESCRIBED IN PARAGRAPH 2 OF ARTICLE 10 AND PROVIDED BY SWITZERLAND PURSUANT TO THAT PARAGRAPH, PROBABLY CANNOT BE KEPT SECRET IF IT IS INTRODUCED INTO EVIDENCE OR OTHERWISE USED IN A CRIMINAL TRIAL IN THE UNITED STATES TO THE EXTENT THE SWISS GOVERNMENT WOULD CONSIDER APPROPRIATE.

THE SWISS GOVERNMENT VERY MUCH HOPES THAT THE EFFORTS TO BE MADE BY THE GOVERNMENT OF THE UNITED STATES ACCORDING TO YOUR LETTER TO OBTAIN A HIGHER DEGREE OF PROTECTION FOR SUCH EVIDENCE OR INFORMATION WILL BE SUCCESSFUL AND -- AS YOUR LEGAL SYSTEM EVOLVES -- GO BEYOND THE LIMITS YOU INDICATED.

ACCEPT EXCELLENCY...

END QUOTE

2. AS PART OF CHAPTER 4 PACKAGE, FOLLOWING ADDITIONAL PARAGRAPH WILL BE ADDED TO ARTICLE 36 AS PARAGRAPH 3:

QUOTE

3. IN THE CASE OF ANY CLAIM THAT A STATE,
EITHER AS THE REQUESTING STATE OR THE
REQUESTED STATE, HAS FAILED TO COMPLY WITH
OBLIGATIONS IMPOSED BY THIS TREATY AND AS
TO SUCH CLAIM A REMEDY IS NOT PROVIDED BY
PARAGRAPH 1 OR 2, THE CLAIMANT MAY INFORM
THE CENTRAL AUTHORITY OF THE OTHER STATE.
WHERE SUCH CLAIM IS DEEMED BY THAT OTHER
STATE TO REQUIRE EXPLANATION, AN INQUIRY
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SHALL BE PUT TO THE FIRST- MENTIONED STATE
AND, IF NECESSARY, THE MATTER SHALL BE
RESOLVED UNDER ARTICLE 39.

END QUOTE

3. GERMAN OF ABOVE ARTICLES AND LETTERS FOLLOW SEPTTEL. ANALYSIS
OF ARTICLES AND LETTERS FOLLOW SEPTTEL.
PERCIVAL

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*** Current Handling Restrictions *** n/a

*** Current Classification *** LIMITED OFFICIAL USE

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts:
Control Number: n/a
Copy: SINGLE
Draft Date: 22 MAY 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973BERN02089
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: n/a
Errors: n/a
Film Number: n/a
From: BERN
Handling Restrictions: n/a
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Legacy Key: link1973/newtext/t19730550/aaaajngz.tel
Line Count: 249
Locator: TEXT ON-LINE
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
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Previous Classification: LIMITED OFFICIAL USE
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Reference: n/a
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Review Event:
Review Exemptions: n/a
Review History: RELEASED <04-Oct-2001 by rowellE0>; APPROVED <03-Dec-2001 by golinofr>
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Declassified/Released
US Department of State
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30 JUN 2005

Review Media Identifier:
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TAGS: EFIN, PFOR, SZ, US
To: EUR
SECSTATE WASHDC
Type: TE
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